



Billing Code: 3720-58

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Restricted Area, Curtis Creek and Arundel Cove, United States Coast Guard Yard,

Baltimore, Maryland

AGENCY: U.S. Army Corps of Engineers, DoD

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is amending its regulations to establish a restricted area in the waters of Curtis Creek and Arundel Cove extending offshore from the United States Coast Guard Yard, Baltimore, located in Baltimore, Maryland. The restricted area is necessary to address the current security and safety needs at U.S. Coast Guard Yard (CG Yard), Baltimore, Maryland, including the protection of Coast Guard-wide military assets as the CG Yard is the Coast Guard's only shipyard and largest industrial facility; performing major ship, electronics and heavy weapons overhaul, repair and manufacture. The CG Yard is also the host command for various Coast Guard commands supporting local and nationwide Coast Guard missions.

DATES: Effective date: [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: Headquarters, U.S. Army Corps of Engineers, Operations and Regulatory Division, 441 G Street, NW, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Division, Washington, D.C. at 202-761-4922 or by e-mail at david.b.olson@usace.army.mil.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending its regulations to establish a restricted area in the waters of Curtis Creek and Arundel Cove extending offshore from the United States Coast Guard Yard, Baltimore, located in Baltimore, Maryland. The restricted area is necessary to address the current security and safety needs at U.S. Coast Guard Yard (CG Yard), Baltimore, Maryland, including the protection of Coast Guard-wide military assets as the CG Yard is the Coast Guard's only shipyard and largest industrial facility; performing major ship, electronics and heavy weapons overhaul, repair and manufacture. The CG Yard is also the host command for various Coast Guard commands supporting local and nationwide Coast Guard missions.

The proposed rule was published in the November 16, 2017, edition of the Federal Register (82 FR 53438) and the docket number was COE-2017-0003. In November 2016, the Corps' Baltimore District issued a public notice on its web page soliciting comments on the proposal. The District received one comment from an adjacent property owner concerning the proposed location of the restricted area in relation to his parcel. The CG Yard was contacted by the District and it was determined that incorrect coordinates in the vicinity of the commenters parcel had been initially provided. Corrected coordinates were subsequently provided to the District by the CG Yard. In response, the District notified the commenter and the coordinates were amended

in the rule text. In addition, the CG Yard initially proposed channel markers within Curtis Creek to demarcate the restricted area. During the establishment process, the CG Yard amended the request and proposed signage that would be placed along the shoreline.

In the November 16, 2017, proposal, the Corps made a preliminary determination that the proposed rule does not require the preparation of an Environmental Impact Statement, and that an environmental assessment would be prepared for the final rule. The regulations governing the National Environmental Policy Act (NEPA) do not require draft environmental assessments to be available for public comment. Federal agencies are only required to solicit public comments to inform decision-making. Given the administrative nature of the proposed rule and the substance of the comments received, we have determined that an environmental assessment is the appropriate mechanism for complying with NEPA requirements. Public input on the proposed action was solicited using Federal Register noticing and local public noticing. Public comments received in response to the notices were documented and fully considered during final agency decision making.

Administrative Requirements

a. Regulatory Planning and Review. Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of

Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

The Corps has determined this rule is not a significant regulatory action. This regulatory action determination is based on the size, duration, and location of the restricted area. The restricted area occupies only a portion of the waterway and a vessel that needs to transit the restricted area may do so if the operator of the vessel obtains permission from the Commanding Officer, U.S. Coast Guard Yard or his/her designated representative. In accordance with 33 CFR 334.3(b), the authority to prescribe danger zone and restricted area regulations must be exercised so as not to unreasonably interfere with or restrict the food fishing industry. The final rule states that fishing, crabbing, trawling, net-fishing, and other aquatic activities may also be conducted with prior approval from the Commanding Officer, U.S. Coast Guard Yard or his/her designated representative. Entities that want to conduct other activities in or near the restricted area may need to obtain other approvals from the applicable federal, state, or local government authority.

b. Impact on Small Entities. The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Corps certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. While some

owners or operators of vessels that intend to transit the restricted area may be small entities, for the reasons stated in paragraph (a) above this rule would not have a significant economic impact on any vessel owner or operator. In addition, the restricted area is necessary to address the current security needs at CG Yard, Baltimore, Maryland, including the protection of Coast Guard-wide military assets. Small entities can utilize navigable waters outside of the restricted area. Small entities may also transit the restricted area as long as they obtain permission from the Commanding Officer, CG Yard or his/her designated representative. The Corps determined that the restricted area would have practically no economic impact on the public, would not result in an anticipated navigational hazard, and would not cause interference with existing waterway traffic. After considering the economic impacts of this restricted area regulation on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

c. Review Under the National Environmental Policy Act. An environmental assessment (EA) has been prepared. We concluded that the establishment of a restricted area at United States Coast Guard Yard, Baltimore, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. The final EA and Finding of No Significant Impact may be reviewed at the Baltimore District Office. Please contact Mr. Steve Elinsky at the phone number specified above for further information.

d. Unfunded Mandates Reform Act. This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates

Reform Act (Public Laws 104-4, 109 Stat. 48, 2 U.S.C. 1501 et seq.). We have also found, under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this rule.

e. Congressional Review Act. The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the Federal Register. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Transportation, Waterways.

For the reasons stated in the preamble, the Corps is amending 33 CFR part 334 to read as follows:

PART 334 – DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Add § 334.145 to read as follows:

§334.145 Curtis Creek and Arundel Cove, U.S. Coast Guard Yard, Baltimore; restricted area.

(a) The area. All of the navigable waters of Curtis Creek extending approximately 120 meters from the high-water mark of the United States Coast Guard facility, bounded

by these coordinates (including the Arundel Cove): Commencing from the shoreline at latitude 39°12'05.8" N, longitude 076°34'28.4" W; thence to latitude 39°12'04.8" N, longitude 076°34'32" W; thence to latitude 39°11'59" N, longitude 076°34'28" W; thence to latitude 39°11'44.8" N, longitude 076°34'25" W; thence to latitude 39°11'44.5" N, longitude 076°34'07" W; and thence along the shoreline to the point of origin. The datum for these coordinates is NAD-83.

(b) The regulations. (1) The restricted area as described in paragraph (a) of this section is only open to government vessels. Government vessels include, but are not limited to, U.S. Coast Guard, U.S. Coast Guard Auxiliary, Department of Defense, National Oceanic and Atmospheric Administration, state and local law enforcement, emergency services and vessels under contract with the U.S. Government. Vessels transiting the restricted area shall proceed across the area by the most direct route and without unnecessary delay. Fishing, crabbing, trawling, net-fishing and other aquatic activities are prohibited without prior approval from the Commanding Officer, U.S. Coast Guard Yard or his/her designated representative. The Coast Guard will install warning signs along the shoreline notifying individuals of the restricted area and prohibiting all unauthorized entry into the area along the property boundary.

(2) All persons, vessels and other craft are prohibited from entering, transiting, drifting, dredging or anchoring within the restricted area as described in paragraph (a) of this section without prior approval from the Commanding Officer, U.S. Coast Guard Yard or his/her designated representative.

(3) The restrictions described in paragraph (b)(1) of this section are in effect 24 hours a day, seven days a week.

(c) Enforcement. The regulations in this section shall be enforced by the Commanding Officer, U.S. Coast Guard Yard or such persons or agencies he/she may designate.

Dated: November 14, 2019.

Thomas P. Smith,
Chief, Operations and Regulatory Division,
Directorate of Civil Works.

[FR Doc. 2019-25272 Filed: 11/20/2019 8:45 am; Publication Date: 11/21/2019]